

Message Text

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ORIGIN EUR-12

INFO OCT-01 ISO-00 SS-15 OES-07 ACDA-07 H-01 L-03
SIG-01 MMO-01 ERDA-05 FEA-01 AID-05 CEA-01
CIAE-00 COME-00 DODE-00 EB-08 FPC-01 INR-07
INT-05 NSAE-00 NSC-05 OMB-01 PM-05 USIA-06 SP-02
STR-04 TRSE-00 FRB-03 LAB-04 SIL-01 /112 R

DRAFTED BY EUR/RPE:WRSALISBURY:MB
APPROVED BY EUR/RPE:ACALBRECHT
S/AS:PFARLEY
T:EMCGAFFIGAN
OES:LNOSENZO
ACDA:RWILLIAMSON(INFO)
H:RPUGH(INFO)
L/OES:RBETTAUER(INFO)

-----093465 042144Z /65

P R 041717Z AUG 77
FM SECSTATE WASHDC
TO AMEMBASSY BRUSSELS PRIORITY
INFO AMEMBASSY COPENHAGEN
AMEMBASSY PARIS
AMEMBASSY BONN
AMEMBASSY DUBLIN
AMEMBASSY LUXEMBOURG
AMEMBASSY THE HAGUE
AMEMBASSY LONDON
AMEMBASSY ROME
AMEMBASSY VIENNA

C O N F I D E N T I A L STATE 183071

USEC ALSO FOR EMBASSY, VIENNA FOR US MISSION IAEA

E.O. 11652: GDS

TAGS: ENRG, TECH, EEC
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SUBJECT: EC AIDE MEMOIRE ON NON-PROLIFERATION ACT OF 1977

REF: BRUSSELS 09073

1. MICHAEL GOPPEL, CURRENTLY ACTING HEAD OF THE EC DELEGA-
TION IN WASHINGTON, DELIVERED SUBJECT AIDE MEMOIRE (TEXT

BELOW) TO EUR/RPE ON AUGUST 3. AFTER PRESENTATION OF THE PAPER, GOPPEL SAID THAT HE HAD BEEN INSTRUCTED TO ADD THAT THE COMMISSION BELIEVES THAT THE RESULTS OF THE INTERNATIONAL NUCLEAR FUEL CYCLE EVALUATION (INFCE) SHOULD NOT BE "PREJUDGED" BY PROPOSED US LEGISLATIVE ACTION.

2. IN RESPONSE TO A QUESTION ON POINT C OF AIDE MEMOIRE (SEE REFTTEL), AS TO WHETHER THE EURATOM TREATY ITSELF DOES NOT DIFFERENTIATE BETWEEN NUCLEAR AND NON-NUCLEAR WEAPONS STATES, GOPPEL INDICATED THAT THE TREATY ESTABLISHING EURATOM (DEPARTMENT NOTE: ARTICLE 84, PARA 3) DOES EXCLUDE MILITARY PROGRAMS FROM ITS PURVIEW, BUT THAT HE WAS AWARE OF NO OTHER COMMUNITY DIFFERENTIATION. HE ADMITTED THAT THE FACT THAT REPROCESSING WILL BE SITED IN THE UK AND FRANCE SUGGESTS SOME DE FACTO DIFFERENCES, BUT THAT THESE WERE NOT PERTINENT TO THE ISSUES POSED BY THE PENDING US

LEGISLATION. HE SUGGESTED THAT THE LEGISLATION, IF ENACTED, COULD CAUSE PROBLEMS WITH THE COMMUNITY BY TENDING TO ENCOURAGE UK AND FRENCH TEMPTATIONS TO SEEK THEIR OWN SOLUTIONS WITH US.

3. WHEN ASKED WHETHER HIS ORAL POINT -- THAT INFCE RESULTS COULD BE "PREJUDGED" BY THE LEGISLATION -- TOOK COGNIZANCE OF THE ADMINISTRATION'S "SAVING CLAUSE" LANGUAGE, HE INDICATED (RATHER TENTATIVELY) THAT IT DID, AND CONFIDENTIAL

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THAT THE ADMINISTRATION APPROACH WAS THEREFORE SOMEWHAT PREFERABLE FROM THE EC POINT OF VIEW TO FORMULATIONS WHICH WOULD NOT PERMIT CONTINUED SUPPLY EVEN IF THE COMMUNITY AGREES TO DISCUSS "RENEGOTIATION." WHEN PRESSED, HE SAID THAT IT WAS HIS UNDERSTANDING THAT THE COMMISSION WAS NOT IMPLYING THAT IT WOULD REFUSE TO DISCUSS RENEGOTIATION (OR WHATEVER MORE PALATABLE PHRASE COULD BE FOUND), ALTHOUGH HE THOUGHT THAT CERTAIN MEMBER STATES MIGHT TAKE A HARDER LINE.

4. WE TOLD GOPPEL WE WOULD BRING THE AIDE MEMOIRE TO THE ATTENTION OF APPROPRIATE USG OFFICIALS. BEGIN TEXT.

AIDE - MEMOIRE

THE COMMISSION OF THE EUROPEAN COMMUNITIES IS FOLLOWING, WITH GREAT INTEREST, U.S. NUCLEAR POLICY DEVELOPMENTS AND IN PARTICULAR ITS INTERNATIONAL ASPECTS. THUS IT HAS CAREFULLY CONSIDERED THE DRAFT "NON-PROLIFERATION ACT OF 1977" THAT THE U.S. GOVERNMENT HAS INTRODUCED BEFORE THE CONGRESS ON APRIL 27, 1977, AND ESPECIALLY THE CHAPTER SPELLING OUT THE CONDITIONS THAT MIGHT BE REQUIRED FOR

COOPERATION AGREEMENTS WITH THE U.S.

THE COMMISSION UNDERSTANDS THE CONCERN FOR NON-PROLIFERATION WHICH LIES AT THE BASIS OF THE PROPOSED LEGISLATION. IT DOES NOT NEED TO REMIND THE U.S. GOVERNMENT THAT IT SHARES THIS CONCERN. IN THIS SPIRIT THE COMMISSION ACKNOWLEDGES THAT THE CONDITIONS SET OUT IN THE NON-PROLIFERATION ACT ARE IN GENERAL REASONABLE AND FAIR.

HOWEVER, AND LEAVING APART VARIOUS MINOR POINTS, THE COMMISSION FEELS IT APPROPRIATE TO DRAW THE U.S. GOVERNMENT'S ATTENTION TO THE FOLLOWING PROPOSED CONDITIONS WHICH COULD, IN ITS OPINION, RAISE SERIOUS PROBLEMS FOR THE EUROPEAN COMMUNITY:
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A) CONCERNING THE NECESSITY OF OBTAINING U.S. CONSENT FOR ANY TRANSFER OF MATERIAL OF U.S. ORIGIN TO OTHER

COUNTRIES:

THE COMMISSION WOULD REMIND THE U.S. THAT FREE CIRCULATION OF GOODS IS ONE OF THE BASIC PRINCIPLES OF THE ROME TREATIES AND THIS ALSO APPLIES TO NUCLEAR MATERIAL (EURATOM-TREATY). THE COMMISSION THEREFORE WOULD EXPECT THAT NO APPROVAL WOULD BE REQUIRED FOR TRANSFERS WITHIN THE COMMUNITY.

B) CONCERNING THE NECESSITY OF PRIOR APPROVAL OF THE U.S. FOR THE REPROCESSING OR OTHER ALTERATION AND FOR THE STORAGE OF MATERIAL:

THIS POSITION CAUSES SERIOUS PROBLEMS FOR THE COMMUNITY IN VIEW OF ITS ENERGY NEEDS AND ITS CURRENT NUCLEAR POLICY OPTIONS. THIS COULD LEAD TO
--PROVISIONS GOING WELL BEYOND REPROCESSING BY, FOR EXAMPLE, COVERING VARIOUS OPERATIONS INVOLVED IN THE MANUFACTURE OF FUEL ELEMENTS;
--DISCRIMINATION AMONG MEMBER STATES;
--JEOPARDIZING THE NUCLEAR COMMON MARKET.

C) CONCERNING PROVISIONS WHICH COULD IMPLY A DISCRIMINATION BETWEEN "NUCLEAR-WEAPON" AND "NON-NUCLEAR WEAPON" COUNTRIES:

THE COMMISSION EMPHASISES THAT ANY SUCH PROVISIONS WOULD BE INCOMPATIBLE WITH THE ROME TREATY AND COULD NOT THEREFORE BE ACCEPTED BY THE COMMUNITY. END TEXT.
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5. FYI: FOR THE BACKGROUND OF ADDRESSEES, THE FOLLOWING IS THE CURRENT LEGISLATIVE STATE-OF-PLAY ON THE NON-PROLIFERATION POLICY BILLS, WITH RESPECT TO THE PROVISION MOST DIRECTLY AFFECTING EURATOM. THE SENATE COMMITTEE ON GOVERNMENTAL AFFAIRS REPORTED OUT ITS BILL ON AUGUST 1, AND THE HOUSE INTERNATIONAL RELATIONS COMMITTEE REPORTED OUT A SIMILAR, BUT NOT IDENTICAL, BILL ON AUGUST 2. THE PRESIDENT HAD PROPOSED A "SAVING CLAUSE" IN THE ADMINISTRATION VERSION THAT EURATOM BE EXCEPTED FROM THE LICENSING CRITERIA APPLICABLE TO OTHER RECIPIENTS SO LONG AS THE EUROPEANS AGREE TO NEGOTIATIONS ON OUR AGREEMENT. THIS WAS DONE TO AVOID ANY "MORATORIUM" ON EXPORTS, SINCE THE EURATOM AND IAEA AGREEMENTS ARE ESSENTIALLY THE ONLY ONES NOT MEETING OUR NEW PROPOSED CRITERIA. THE SENATE BILL PROVIDES FOR AN 18 MONTH EXEMPTION, WITH THE PRESIDENT AUTHORIZED TO EXTEND THE PERIOD FOR SUCCESSIVE 12 MONTH PERIODS (WITH NO CONGRESSIONAL VETO). THE HOUSE BILL LIMITS THE DURATION OF THE EXEMPTION TO 18 MONTHS, BUT SUBCOMMITTEE CHAIRMAN

BINGHAM HAS INDICATED IN COMMITTEE "FLEXIBILITY" ON A COMPROMISE. IT IS BELIEVED THAT THE HOUSE WILL ACCEPT THE SENATE VERSION IN CONFERENCE. END FYI. CHRISTOPHER

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Disposition Approved on Date:
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